



General Assembly

Substitute Bill No. 5567

February Session, 2016

* HB05567BA 031716 *

**AN ACT CONCERNING ALTERNATIVES TO FORECLOSURES, THE
FORECLOSURE MEDIATION PROGRAM, AND THE MORTGAGOR IN
GOOD STANDING STATUTES.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) For purposes of this section
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Mortgage" has the same meaning as provided in section 49-24a
4 of the general statutes, as amended by this act;

5 (2) "Mortgagee" has the same meaning as provided in section 49-24a
6 of the general statutes, as amended by this act;

7 (3) "Mortgagor" has the same meaning as provided in section 49-24a
8 of the general statutes, as amended by this act;

9 (4) "Residential real property" has the same meaning as provided in
10 section 49-24a of the general statutes, as amended by this act;

11 (5) "Senior lien" means the first security interest placed upon a
12 property to secure payment of a debt or performance of an obligation
13 before one or more junior liens;

14 (6) "Junior lien" means a security interest placed upon a property to
15 secure payment of a debt or performance of an obligation after a senior

16 lien is placed on such property, but shall not include a mechanic's lien,
17 as defined in section 49-33 of the general statutes;

18 (7) "Lienholder" means a person who holds a security interest in real
19 property; and

20 (8) "Underwater mortgage" means a mortgage where the debt
21 associated with such mortgage, along with any senior lien, exceeds the
22 fair market value of the mortgaged property as determined by a court
23 in accordance with sections 4 and 5 of this act.

24 Sec. 2. (NEW) (*Effective from passage*) Notwithstanding any provision
25 of the general statutes, any underwater mortgage on residential real
26 property may be modified, and the principal balance increased by the
27 amount of accrued interest, fees and costs allowed by law, without the
28 consent of the holders of junior liens and without loss of priority for
29 the full amount of the modified mortgage, provided such modification
30 is approved by the court through entry of a judgment of loss
31 mitigation under sections 4 and 5 of this act.

32 Sec. 3. (NEW) (*Effective from passage*) A mortgagor of an underwater
33 mortgage may elect to transfer the residential real property
34 encumbered by the mortgage to a mortgagee in satisfaction of the
35 mortgagor's obligation to the mortgagee by agreeing to transfer such
36 property in a record executed by both parties. The transfer agreement
37 shall: (1) Transfer to the mortgagee all interests in the property, except
38 the interests reserved to the mortgagor in the transfer agreement or the
39 interests held by more senior mortgagees or lienholders; (2) discharge
40 the mortgage; and (3) contemplate the termination of any other interest
41 in the property subordinate to that of the lienholder party to the
42 transfer agreement following a court's entry of a judgment of loss
43 mitigation under sections 4 and 5 of this act.

44 Sec. 4. (NEW) (*Effective from passage*) A mortgagee or mortgagor may
45 file a motion for judgment of loss mitigation in a pending foreclosure
46 action following a modification under section 2 of this act or execution

47 of a transfer agreement under section 3 of this act. Upon motion of the
48 mortgagee or mortgagor and with the consent of the counterparty, the
49 court, after notice and hearing, may render a judgment of loss
50 mitigation approving the modification or transfer. Such judgment shall
51 be a final judgment for purposes of appeal. The only issues at such
52 hearing shall be (1) a finding of the fair market value of the residential
53 real property encumbered by the mortgage, which may be determined
54 by an appraisal conducted by a court-appointed disinterested real
55 estate appraiser, (2) a finding of the fair market value of any priority
56 liens on such property, (3) the mortgagor's debt, (4) whether the
57 mortgage is an underwater mortgage, and (5) whether the
58 modification or transfer was agreed to in good faith and for the
59 purpose of mitigating the loss the mortgagor and mortgagee would
60 incur through a judgment of foreclosure. If the court renders a
61 judgment of loss mitigation, immediately after the expiration of any
62 applicable appeal period or after the disposition of an appeal that
63 affirms the judgment, then either (A) the mortgage held by the
64 mortgagee shall be increased as contemplated in such judgment and
65 any junior lienholder's lien shall be deemed subordinated to such
66 mortgage, in the same order as existed prior to the subordination, or
67 (B) the transfer contemplated in the transfer agreement shall be
68 effectuated. The mortgagor and mortgagee shall, thirty days after the
69 modification or transfer, submit the judgment of loss mitigation to the
70 town clerk for recording in accordance with title 7 of the general
71 statutes.

72 Sec. 5. (NEW) (*Effective from passage*) If the court does not enter a
73 judgment of loss mitigation, then the modification or transfer
74 contemplated by the mortgagor and mortgagee under section 2 or 3 of
75 this act shall not be consummated. In the event of such nonentry:

76 (1) The mortgagor may, if eligible, petition for inclusion in the
77 foreclosure mediation program established pursuant to section 49-31m
78 of the general statutes, provided the mortgagor did not substantially
79 contribute to the events leading to such denial or circumstances. In

80 determining whether to grant such petition the court shall give
81 consideration to any testimony or affidavits the parties may submit in
82 support of or in opposition to such petition. The court may grant such
83 petition upon a determination that (A) such petition is not motivated
84 primarily by a desire to delay entry of a judgment of foreclosure, and
85 (B) it is highly probable the parties will reach an agreement through
86 mediation; and

87 (2) The mortgagee shall have the right to request the entry of a
88 judgment of foreclosure in accordance with the other provisions of
89 law, including the provisions governing strict foreclosure.

90 Sec. 6. (NEW) (*Effective from passage*) Nothing in sections 2 to 5,
91 inclusive, of this act shall be construed as eliminating the debt or any
92 judgment associated with an affected junior lien on the residential real
93 property encumbered by the underwater mortgage.

94 Sec. 7. Subsection (a) of section 49-24b of the general statutes is
95 repealed and the following is substituted in lieu thereof (*Effective from*
96 *passage*):

97 (a) On and after January 1, 2015, a mortgagee who desires to
98 foreclose upon a mortgage encumbering residential real property of a
99 mortgagor shall give notice to the mortgagor by registered or certified
100 mail, postage prepaid, at the address of the residential real property
101 that is secured by such mortgage, in accordance with the relevant
102 notice provisions of this chapter and chapter 134. No such mortgagee
103 may commence a foreclosure of a mortgage prior to mailing such
104 notice. Such notice shall advise the mortgagor of his or her
105 delinquency or other default under the mortgage and that the
106 mortgagor has the option to contact the mortgagee to discuss whether
107 the property may, by mutual consent of the mortgagee and mortgagor,
108 be marketed for sale pursuant to a listing agreement established in
109 accordance with section 49-24d. Such notice shall also advise the
110 mortgagor (1) of the mailing address, telephone number, facsimile
111 number and electronic mail address that should be used to contact the

112 mortgagee; (2) of a date not less than sixty days after the date of such
113 notice by which the mortgagor must initiate such contact, with
114 contemporaneous confirmation in writing of the election to pursue
115 such option sent to the designated mailing address or electronic mail
116 address of the mortgagee; (3) that the mortgagor should contact a real
117 estate agent licensed under chapter 392 to discuss the feasibility of
118 listing the property for sale pursuant to the foreclosure by market sale
119 process; (4) that, if the mortgagor and mortgagee both agree to proceed
120 with further discussions concerning an acceptable listing agreement,
121 the mortgagor must first permit an appraisal to be obtained in
122 accordance with section 49-24c for purposes of verifying eligibility for
123 foreclosure by market sale; (5) that the appraisal will require both an
124 interior and exterior inspection of the property; (6) that the terms and
125 conditions of the listing agreement, including the duration and listing
126 price, must be acceptable to both the mortgagee and mortgagor; (7)
127 that the terms and conditions of any offer to purchase, including the
128 purchase price and any contingencies, must be acceptable to both the
129 mortgagor and mortgagee; (8) that if an acceptable offer is received,
130 the mortgagor will sign an agreement to sell the property through a
131 foreclosure by market sale; and (9) in bold print and at least ten-point
132 font, that if the mortgagor consents to a foreclosure by market sale, the
133 mortgagor will not be eligible for foreclosure mediation in any type of
134 foreclosure action that is commenced following the giving of such
135 consent. The notice provided under this subsection may be combined
136 with and delivered at the same time as any other notice required by
137 subsection (a) of section 8-265ee or federal law. Should the mortgagor
138 and mortgagee, by their mutual consent, choose to enter into
139 discussions at any point subsequent to the commencement of a
140 foreclosure action regarding the possibility of marketing the property
141 pursuant to a listing agreement established in accordance with section
142 49-24d, nothing in this section, sections 1 to 6, inclusive, of this act or
143 section 49-24e, as amended by this act, shall be construed as
144 prohibiting the parties from entering into the listing agreement.

145 Sec. 8. Subsections (a) and (b) of section 49-24e of the general

146 statutes are repealed and the following is substituted in lieu thereof
147 (*Effective from passage*):

148 (a) If a mortgagor executes a listing agreement that is acceptable to
149 both the mortgagee and mortgagor pursuant to section 49-24d and
150 receives an offer to purchase the residential real property that
151 encompasses a price, terms and conditions that are acceptable to both
152 the mortgagor and the mortgagee, the mortgagor shall execute a
153 contract for sale with the purchaser that shall reflect the agreed-upon
154 price, terms and conditions and be contingent upon the completion of
155 the foreclosure by market sale in accordance with sections 49-24 to 49-
156 24g, inclusive, as amended by this act, and sections 49-26 to 49-28,
157 inclusive, [and 49-31t.] If an offer is received, but is unacceptable to
158 the mortgagee, the mortgagee shall provide the mortgagor with
159 written notice of its decision and, without limiting the breadth of its
160 discretion, a general explanation of the reason or reasons for such
161 decision. Such notice shall not be required in instances where the offer
162 is unacceptable to the mortgagor. The mortgagor shall, not later than
163 five days after the date of the execution of the purchase and sale
164 contract, provide the mortgagee with a copy of such contract along
165 with written documentation, in a form and substance acceptable to the
166 mortgagee, evidencing the mortgagor's consent to the filing of a
167 motion for judgment of foreclosure by market sale.

168 (b) Unless otherwise prohibited by applicable law, not later than
169 thirty days after the receipt of such contract and the documentation
170 evidencing consent, or not later than thirty days after the satisfaction
171 or expiration of any contingencies in the contract that must either have
172 been satisfied or expired before the foreclosure action may be
173 commenced to consummate the sale, whichever thirty-day time frame
174 is later, the mortgagee shall commence a foreclosure by market sale by
175 writ, summons and complaint. Any such complaint shall claim, in the
176 prayer for relief, a foreclosure of the mortgage pursuant to sections 49-
177 24 to 49-24g, inclusive, as amended by this act, and sections 49-26 to
178 49-28, inclusive, [and 49-31t,] and shall contain a copy of the contract

179 between the mortgagor and the purchaser as well as a copy of the
180 appraisal obtained pursuant to section 49-24c. If the mortgagee has
181 already commenced a foreclosure action at the time of either receipt of
182 such contract or such satisfaction or expiration, then, not later than
183 thirty days after the latest of such receipt, satisfaction or expiration, the
184 mortgagee shall make a motion for judgment of foreclosure by market
185 sale in accordance with the provisions of section 49-24f and attach the
186 contract and appraisal to the motion. No mortgagee may require the
187 employ or use of a particular list of persons licensed under chapter 392
188 as a condition of approval of an offer. No mortgagee may require the
189 use of an auction or other alternative method of sale as a condition of
190 approval of an offer once the listing agreement required pursuant to
191 section 49-24d has been executed by the mortgagor. Nothing in this
192 section shall be construed as requiring either the mortgagee or
193 mortgagor to approve any offer that is made pursuant to this section.

194 Sec. 9. Section 49-24 of the general statutes is repealed and the
195 following is substituted in lieu thereof (*Effective from passage*):

196 All liens and mortgages affecting real property may, on the written
197 motion of any party to any suit relating thereto, be foreclosed (1) by a
198 decree of sale instead of a strict foreclosure at the discretion of the
199 court before which the foreclosure proceedings are pending, or (2)
200 with respect to mortgages, as defined in section 49-24a, as amended by
201 this act, that are a first mortgage against the property, by a judgment of
202 foreclosure by market sale upon the written motion of the mortgagee,
203 as defined in section 49-24a, as amended by this act, and with consent
204 of the mortgagor, as defined in section 49-24a, as amended by this act,
205 in accordance with sections 49-24a to 49-24g, inclusive, as amended by
206 this act, and sections 49-26 to 49-28, inclusive, [, and 49-31t.]

207 Sec. 10. Section 49-24a of the general statutes is repealed and the
208 following is substituted in lieu thereof (*Effective from passage*):

209 For purposes of a foreclosure by market sale in accordance with this
210 section [,] and sections 49-24b to 49-24g, inclusive, as amended by this

211 act: [, and section 49-31t:]

212 (1) "Mortgage" means a mortgage deed, deed of trust or other
213 equivalent consensual security interest on residential real property
214 securing a loan made primarily for personal, family or household
215 purposes that is first in priority over any other mortgages or liens
216 encumbering the residential real property, except those liens that are
217 given priority over a mortgage pursuant to state or federal law;

218 (2) "Mortgagee" means the owner or servicer of the debt secured by
219 a mortgage;

220 (3) "Mortgagor" means the owner-occupant of residential real
221 property located in this state who is also the borrower under the loan
222 that is secured by a mortgage, other than a reverse annuity mortgage,
223 encumbering such residential real property that is the primary
224 residence of such owner-occupant, where the amount due on such
225 mortgage loan, including accrued interest, late charges and other
226 amounts secured by the mortgage, when added to amounts for which
227 there is a prior lien by operation of law, exceeds the appraised value of
228 the property; and

229 (4) "Residential real property" means a one-to-four-family dwelling
230 occupied as a residence by a mortgagor.

231 Sec. 11. Subsection (b) of section 49-24b of the general statutes is
232 repealed and the following is substituted in lieu thereof (*Effective from*
233 *passage*):

234 (b) At any time after the date provided in the notice required under
235 subsection (a) of this section, the foreclosure of the mortgagor's
236 mortgage may continue without any further restriction or requirement,
237 provided the mortgagee files an affidavit with the court stating that the
238 notice provisions of said subsection have been complied with and that
239 either the mortgagor failed to confirm his or her election in accordance
240 with said subsection by the date disclosed in the notice or that
241 discussions were initiated, but (1) the mortgagee and mortgagor were

242 unable to reach a mutually acceptable agreement to proceed; (2) based
243 on the appraisal obtained pursuant to section 49-24c, the property does
244 not appear to be subject to a mortgage that is eligible for foreclosure by
245 market sale; (3) the mortgagor did not grant reasonable interior access
246 for the appraisal required by section 49-24c; (4) the mortgagee and
247 mortgagor were unable to reach an agreement as to a mutually
248 acceptable listing agreement pursuant to section 49-24d; (5) a listing
249 agreement was executed, but no offers to purchase were received; (6)
250 an offer or offers were received, but were unacceptable to either or
251 both the mortgagee and mortgagor; or (7) other circumstances exist
252 that would allow the mortgagee or mortgagor to elect not to proceed
253 with a foreclosure by market sale pursuant to sections 49-24 to 49-24g,
254 inclusive, as amended by this act, and sections 49-26 to 49-28,
255 inclusive, [and 49-31t,] or that would otherwise make the mortgage
256 ineligible for foreclosure by market sale. The affidavit required by this
257 subsection may be combined with the affidavit required by subsection
258 (b) of section 8-265ee.

259 Sec. 12. Section 49-31e of the general statutes is repealed and the
260 following is substituted in lieu thereof (*Effective from passage*):

261 [(a)] In an action by a lender for the foreclosure of a mortgage of
262 residential real property, [such lender shall give notice to the
263 homeowner of the availability of the provisions of sections 49-31d to
264 49-31i, inclusive, at the time the action is commenced.

265 (b) A homeowner who is given notice of the availability of the
266 provisions of sections 49-31d to 49-31i, inclusive, must] the
267 homeowner shall make application for protection from foreclosure,
268 [within] under the provisions of sections 49-31d to 49-31i, inclusive,
269 not later than twenty-five days [of] after the return day.

270 [(c) No judgment foreclosing the title to real property by strict
271 foreclosure or by a decree of sale shall be entered unless the court is
272 satisfied from pleadings or affidavits on file with the court that notice
273 has been given to the homeowner against whom the foreclosure action

274 is commenced of the availability of the provisions of sections 49-31d to
275 49-31i, inclusive.

276 (d) If a homeowner against whom the foreclosure action is
277 commenced was not given notice of the availability of the provisions of
278 sections 49-31d to 49-31i, inclusive, at the time the action was
279 commenced, and such homeowner was eligible to apply for protection
280 from foreclosure at such time, the court, upon its own motion or upon
281 the written motion of such homeowner, may issue an order staying the
282 foreclosure action for fifteen days during which period the homeowner
283 may apply to the court for protection from foreclosure by submitting
284 an application together with a financial affidavit as required by
285 subsection (a) of section 49-31f.]

286 Sec. 13. Section 49-22 of the general statutes is repealed and the
287 following is substituted in lieu thereof (*Effective from passage*):

288 (a) In any action brought for the foreclosure of a mortgage or lien
289 upon land, or for any equitable relief in relation to land, the plaintiff
290 may, in his complaint, demand possession of the land, and the court
291 may, if it renders judgment in his favor and finds that he is entitled to
292 the possession of the land, issue execution of ejectment, commanding
293 the officer to eject the person or persons in possession of the land no
294 fewer than five business days after the date of service of such
295 execution and to put in possession thereof the plaintiff or the party to
296 the foreclosure entitled to the possession by the provisions of the
297 decree of said court, provided no execution shall issue against any
298 person in possession who is not a party to the action except a
299 transferee or lienor who is bound by the judgment by virtue of a lis
300 pendens. The officer shall eject the person or persons in possession and
301 may remove such person's possessions and personal effects and
302 deliver such possessions and effects to the place of storage designated
303 by the chief executive officer of the town for such purposes.

304 (b) Before any such removal, the state marshal charged with
305 executing upon the ejectment shall give the chief executive officer of

306 the town twenty-four hours notice of the ejectment, stating the date,
307 time and location of such ejectment as well as a general description, if
308 known, of the types and amount of property to be removed from the
309 land and delivered to the designated place of storage. [Before] At least
310 five business days before giving such notice to the chief executive
311 officer of the town, the state marshal shall use reasonable efforts to
312 locate and notify the person or persons in possession of the date and
313 time such ejectment is to take place and of the possibility of a sale
314 pursuant to subsection (c) of this section and shall provide clear
315 instructions as to how and where such person or persons may reclaim
316 any possessions and personal effects removed and stored pursuant to
317 this section, including a telephone number that such person or persons
318 may call to arrange release of such possessions and personal effects.

319 (c) Whenever a mortgage or lien upon land has been foreclosed and
320 execution of ejectment issued, and the possessions and personal effects
321 of the person in possession thereof are removed by a state marshal
322 under this section, such possessions and effects shall be delivered by
323 such marshal to the designated place of storage. Such removal,
324 delivery and storage shall be at the expense of such person. If the
325 possessions and effects are not reclaimed by such person and the
326 expense of the storage is not paid to the chief executive officer within
327 fifteen days after such ejectment, the chief executive officer shall sell
328 the same at public auction, after using reasonable efforts to locate and
329 notify such person of the sale and after posting notice of the sale for
330 one week on the public signpost nearest to the place where the
331 ejectment was made, if any, or at some exterior place near the office of
332 the town clerk. The chief executive officer shall deliver to such person
333 the net proceeds of the sale, if any, after deducting a reasonable charge
334 for storage of such possessions and effects. If such person does not
335 demand the net proceeds within thirty days after the sale, the chief
336 executive officer shall turn over the net proceeds of the sale to the town
337 treasury.

338 Sec. 14. Subdivision (4) of subsection (c) of section 49-31I of the 2016

339 supplement to the general statutes is repealed and the following is
340 substituted in lieu thereof (*Effective from passage*):

341 (4) Upon receipt of the mortgagor's appearance and foreclosure
342 mediation certificate forms, and provided the court confirms the
343 defendant in the foreclosure action is a mortgagor and that said
344 mortgagor has sent a copy of the mediation certificate form to the
345 plaintiff, the court shall assign the case to mediation and issue notice of
346 such assignment to all appearing parties, which notice shall include an
347 electronic mail address for all communications related to the
348 mediation. The court shall issue such notice not earlier than the date
349 five business days after the return date or by the date three business
350 days after the date on which the court receives the mortgagor's
351 appearance and foreclosure mediation certificate forms, whichever is
352 later, except that if the court does not receive the appearance and
353 foreclosure mediation certificate forms from the mortgagor by the date
354 fifteen days after the return date for the foreclosure action, the court
355 shall not assign the case to mediation. Promptly upon receipt of the
356 notice of assignment, but not later than the thirty-fifth day following
357 the return date, the mortgagee or its counsel shall deliver to the
358 mediator, via the electronic mail address provided for communications
359 related to the mediation, and to the mortgagor, via first class, priority
360 or overnight mail, (A) an account history identifying all credits and
361 debits assessed to the loan account and any related escrow account in
362 the immediately preceding twelve-month period and an itemized
363 statement of the amount required to reinstate the mortgage loan with
364 accompanying information, written in plain language, to explain any
365 codes used in the history and statement which are not otherwise self-
366 explanatory, (B) the name, business mailing address, electronic mail
367 address, facsimile number and direct telephone number of an
368 individual able to respond with reasonable adequacy and promptness
369 to questions relative to the information submitted to the mediator
370 pursuant to this subdivision, and any subsequent updates to such
371 contact information, which shall be provided reasonably promptly to
372 the mediator via the electronic mail address provided for

373 communication related to the mediation, (C) current versions of all
374 reasonably necessary forms and a list of all documentation reasonably
375 necessary for the mortgagee to evaluate the mortgagor for common
376 alternatives to foreclosure that are available through the mortgagee, if
377 any, (D) a copy of the note and mortgage, including any agreements
378 modifying such documents, (E) summary information regarding the
379 status of any pending foreclosure avoidance efforts being undertaken
380 by the mortgagee, and (F) [a copy of any loss mitigation affidavit filed
381 with the court, and (G)] at the mortgagee's option, (i) the history of
382 foreclosure avoidance efforts with respect to the mortgagor, (ii)
383 information regarding the condition of mortgaged property, and (iii)
384 such other information as the mortgagee may determine is relevant to
385 meeting the objectives of the mediation program. Following the
386 mediator's receipt of such information, the court shall assign a
387 mediator to the mediation and schedule a meeting with the mediator
388 and [the mortgagor] all relevant mortgagors and shall endeavor to
389 hold such meeting on or prior to the forty-ninth day following the
390 return date. The notice of such meeting shall instruct the mortgagor to
391 complete the forms prior to the meeting and to furnish such forms
392 together with the documentation contained in the list, as provided by
393 the mortgagee following the filing of the foreclosure mediation
394 certificate, at the meeting. At such meeting, the mediator shall review
395 such forms and documentation with the mortgagor, along with the
396 information supplied by the mortgagee, in order to discuss the options
397 that may be available to the mortgagor, including any community-
398 based resources, and assist the mortgagor in completing the forms and
399 furnishing the documentation necessary for the mortgagee to evaluate
400 the mortgagor for alternatives to foreclosure. The mediator may elect
401 to schedule subsequent meetings with the mortgagor and determine
402 whether any mortgagor may be excused from an in-person appearance
403 at such subsequent meeting. The mediator may excuse any mortgagor
404 from attending such meeting or any subsequent meetings, provided
405 the mortgagor shows cause for nonattendance. Such cause may
406 include, but is not limited to, the mortgagor no longer owning the
407 home pursuant to a judgment of marital dissolution and related

408 transfer via deed or no longer residing in the home. As soon as
409 practicable, but in no case later than the eighty-fourth day following
410 the return date, or the extended deadline if such an extended deadline
411 is established pursuant to this subdivision, the mediator shall facilitate
412 and confirm the submission by the mortgagor of the forms and
413 documentation to the mortgagee's counsel via electronic means and, at
414 the mortgagee's election, directly to the mortgagee per the mortgagee's
415 instruction, and determine, based on the participating mortgagor's
416 attendance at the meetings and the extent the mortgagor completed the
417 forms and furnished the documentation contemplated in this
418 subdivision, or failed to perform such tasks through no material fault
419 of the mortgagee, and file a report with the court indicating, (I)
420 whether mediation shall be scheduled with the mortgagee, (II) whether
421 the mortgagor attended scheduled meetings with the mediator, (III)
422 whether the mortgagor fully or substantially completed the forms and
423 furnished the documentation requested by the mortgagee, (IV) the
424 date on which the mortgagee supplied the forms and documentation,
425 and (V) any other information the mediator determines to be relevant
426 to the objectives of the mediation program. The mediator may file, and
427 the court may grant, a motion for extension of the premediation period
428 beyond the eighty-fourth day following the return date if good cause
429 can be shown for such an extension. Any such motion shall be filed,
430 with a copy simultaneously sent to the mortgagee and as soon as
431 practicable to the mortgagor, not later than the eighty-fourth day
432 following the return date. The mortgagee and mortgagor shall each
433 have five business days from the day the motion was filed to file an
434 objection or supplemental papers, and the court shall issue its ruling,
435 without a hearing, not later than ten business days from the date the
436 motion was filed. If the court determines that good cause exists for an
437 extension, the court shall therewith establish an extended deadline so
438 that the premediation period shall end as soon thereafter as may be
439 practicable, but not later than thirty-five days from the date of the
440 ruling, taking into account the complexity of the mortgagor's financial
441 circumstances, the mortgagee's documentation requirements, and the
442 timeliness of the mortgagee's and mortgagor's compliance with their

443 respective premediation obligations. If the court denies the mediator's
444 motion, the extended deadline for purposes of this subdivision shall be
445 three days after the court rules on the motion. No meeting or
446 communication between the mediator and mortgagor under this
447 subdivision shall be treated as an impermissible ex parte
448 communication. If the mediator determines that the mortgagee shall
449 participate in mediation, the court shall promptly issue notice to all
450 parties of such determination and schedule a mediation session
451 between the mortgagee and [mortgagor] relevant mortgagors in
452 accordance with subsection (c) of section 49-31n to be held not later
453 than five weeks following the submission to the mortgagee of the
454 forms and documentation contemplated in this subdivision. The
455 mediator may excuse any mortgagor from attending the mediation
456 session or subsequent meetings, provided cause is shown for
457 nonattendance. Such cause may include, but is not limited to, the
458 mortgagor no longer owning the home pursuant to a judgment of
459 marital dissolution and related transfer via deed or no longer residing
460 in the home. If the mediator determines that no sessions between the
461 mortgagee and mortgagor shall be scheduled, the court shall promptly
462 issue notice to all parties regarding such determination and mediation
463 shall be terminated. Any mortgagor wishing to contest such
464 determination shall petition the court and show good cause for
465 reinclusion in the mediation program, including, but not limited to, a
466 material change in financial circumstances or a mistake or
467 misunderstanding of the facts by the mediator.

468 Sec. 15. Subdivision (2) of subsection (b) of section 49-31n of the
469 2016 supplement to the general statutes is repealed and the following
470 is substituted in lieu thereof (*Effective from passage*):

471 (2) The first mediation session shall be held not later than fifteen
472 business days after the court sends notice to all parties that a
473 foreclosure mediation request form has been submitted to the court.
474 The mortgagor and mortgagee shall appear in person at each
475 mediation session and shall have the ability to mediate, except that (A)

476 if a party is represented by counsel, the party's counsel may appear in
477 lieu of the party to represent the party's interests at the mediation,
478 provided the party has the ability to mediate, [the mortgagor attends
479 the first mediation session in person,] and the party is available (i)
480 during the mediation session by telephone, and (ii) to participate in the
481 mediation session by speakerphone, provided an opportunity is
482 afforded for confidential discussions between the party and party's
483 counsel, (B) following the initial mediation session, if there are two or
484 more mortgagors who are self-represented, only one mortgagor shall
485 be required to appear in person at each subsequent mediation session
486 unless good cause is shown, provided the other mortgagors are
487 available (i) during the mediation session, and (ii) to participate in the
488 mediation session by speakerphone, [and] (C) if a party suffers from a
489 disability or other significant hardship that imposes an undue burden
490 on such party to appear in person, the mediator may grant permission
491 to such party to participate in the mediation session by telephone, and
492 (D) a mortgagor may be excused from appearing at the mediation
493 session if cause is shown that the presence of such mortgagor is not
494 needed to further the interests of mediation. Such cause may include,
495 but is not limited to, the mortgagor no longer owning the home
496 pursuant to a judgment of marital dissolution and related transfer via
497 deed or no longer residing in the home. A mortgagor's spouse, who is
498 not a mortgagor but who lives in the subject property, may appear at
499 each mediation session, provided all appearing mortgagors consent, in
500 writing, to such spouse's appearance or such spouse shows good cause
501 for his or her appearance and the mortgagors consent in writing to the
502 disclosure of nonpublic personal information to such spouse. If the
503 mortgagor has submitted a complete package of financial
504 documentation in connection with a request for a particular
505 foreclosure alternative, the mortgagee shall have thirty-five days from
506 the receipt of the completed package to respond with a decision and, if
507 the decision is a denial of the request, provide the reasons for such
508 denial. If the mortgagor has, in connection with a request for a
509 foreclosure alternative, submitted a financial package that is not
510 complete, or if the mortgagee's evaluation of a complete package

511 reveals that additional information is necessary to underwrite the
512 request, the mortgagee shall request the missing or additional
513 information within a reasonable period of time of such evaluation. If
514 the mortgagee's evaluation of a complete package reveals that
515 additional information is necessary to underwrite the request, the
516 thirty-five-day deadline for a response shall be extended but only for
517 so long as is reasonable given the timing of the mortgagor's submission
518 of such additional information and the nature and context of the
519 required underwriting. Not later than the third business day after each
520 mediation session held on or after June 18, 2013, the mediator shall file
521 with the court a report indicating, to the extent applicable, (i) the
522 extent to which each of the parties complied with the requirements set
523 forth in this subdivision, including the requirement to engage in
524 conduct that is consistent with the objectives of the mediation program
525 and to possess the ability to mediate, (ii) whether the mortgagor
526 submitted a complete package of financial documentation to the
527 mortgagee, (iii) a general description of the foreclosure alternative
528 being requested by the mortgagor, (iv) whether the mortgagor has
529 previously been evaluated for similar requests, whether prior to
530 mediation or in mediation, and, if so, whether there has been any
531 apparent change in circumstances since a decision was made with
532 respect to that prior evaluation, (v) whether the mortgagee has
533 responded to the mortgagor's request for a foreclosure alternative and,
534 if so, a description of the response and whether the mediator is aware
535 of any material reason not to agree with the response, (vi) whether the
536 mortgagor has responded to an offer made by the mortgagee on a
537 reasonably timely basis, and if so, an explanation of the response, (vii)
538 whether the mortgagee has requested additional information from the
539 mortgagor and, if so, the stated reasons for the request and the date by
540 which such additional information shall be submitted so that
541 information previously submitted by the mortgagor, to the extent
542 possible, may still be used by the mortgagee in conducting its review,
543 (viii) whether the mortgagor has supplied, on a reasonably timely
544 basis, any additional information that was reasonably requested by the
545 mortgagee, and, if not, the stated reason for not doing so, (ix) if

546 information provided by the mortgagor is no longer current for
547 purposes of evaluating a foreclosure alternative, a description of the
548 out-of-date information and an explanation as to how and why such
549 information is no longer current, (x) whether the mortgagee has
550 provided a reasonable explanation of the basis for a decision to deny a
551 request for a loss mitigation option or foreclosure alternative and
552 whether the mediator is aware of any material reason not to agree with
553 that decision, (xi) whether the mortgagee has complied with the time
554 frames set forth in this subdivision for responding to requests for
555 decisions, (xii) if a subsequent mediation session is expected to occur, a
556 general description of the expectations for such subsequent session
557 and for the parties prior to such subsequent session and, if not
558 otherwise addressed in the report, whether the parties satisfied the
559 expectations set forth in previous reports, and (xiii) a determination of
560 whether the parties will benefit from further mediation. The mediator
561 shall deliver a copy of such report to each party to the mediation when
562 the mediator files the report. The parties shall have the opportunity to
563 submit their own supplemental information following the filing of the
564 report, provided such supplemental information shall be submitted
565 not later than five business days following the receipt of the mediator's
566 report. Any request by the mortgagee to the mortgagor for additional
567 or updated financial documentation shall be made in writing. The
568 court may impose sanctions on any party or on counsel to a party if
569 such party or such counsel engages in intentional or a pattern or
570 practice of conduct during the mediation process that is contrary to the
571 objectives of the mediation program. Any sanction that is imposed
572 shall be proportional to the conduct and consistent with the objectives
573 of the mediation program. Available sanctions shall include, but not be
574 limited to, terminating mediation, ordering the mortgagor or
575 mortgagee to mediate in person, forbidding the mortgagee from
576 charging the mortgagor for the mortgagee's attorney's fees, awarding
577 attorney's fees, and imposing fines. In the case of egregious
578 misconduct, the sanctions shall be heightened. The court shall not
579 award attorney's fees to any mortgagee for time spent in any
580 mediation session if the court finds that such mortgagee has failed to

581 comply with this subdivision, unless the court finds reasonable cause
582 for such failure.

583 Sec. 16. Subdivision (2) of subsection (c) of section 49-31n of the
584 general statutes is repealed and the following is substituted in lieu
585 thereof (*Effective from passage*):

586 (2) The mortgagor and mortgagee shall appear in person at each
587 mediation session and shall have the ability to mediate, except that (A)
588 if a party is represented by counsel, the party's counsel may appear in
589 lieu of the party to represent the party's interests at the mediation,
590 provided the party has the ability to mediate, the mortgagor attends
591 the first mediation session in person and the party is available (i)
592 during the mediation session by telephone, and (ii) to participate in the
593 mediation session by speakerphone, provided an opportunity is
594 afforded for confidential discussions between the party and party's
595 counsel, (B) following the initial mediation session, if there are two or
596 more mortgagors who are self-represented, only one mortgagor shall
597 be required to appear in person at each subsequent mediation session
598 unless good cause is shown, provided the other mortgagors are
599 available (i) during the mediation session, and (ii) to participate in the
600 mediation session by speakerphone, [and] (C) if a party suffers from a
601 disability or other significant hardship that imposes an undue burden
602 on such party to appear in person, the mediator may grant permission
603 to such party to participate in the mediation session by telephone, and
604 (D) a mortgagor may be excused from appearing at the mediation
605 session if cause is shown that the presence of such mortgagor is not
606 needed to further the interests of mediation. Such cause may include,
607 but is not limited to, the mortgagor no longer owning the home
608 pursuant to a judgment of marital dissolution and related transfer via
609 deed or no longer residing in the home. A mortgagor's spouse, who is
610 not a mortgagor but who lives in the subject property, may appear at
611 each mediation session, provided all appearing mortgagors consent, in
612 writing, to such spouse's appearance or such spouse shows good cause
613 for his or her appearance and the mortgagors consent, in writing, to

614 the disclosure of nonpublic personal information to such spouse. If the
615 mortgagor has submitted a complete package of financial
616 documentation in connection with a request for a particular
617 foreclosure alternative, the mortgagee shall have thirty-five days from
618 the receipt of the completed package to respond with a decision and, if
619 the decision is a denial of the request, provide the reasons for such
620 denial. If the mortgagor has, in connection with a request for a
621 foreclosure alternative, submitted a financial package that is not
622 complete, or if the mortgagee's evaluation of a complete package
623 reveals that additional information is necessary to underwrite the
624 request, the mortgagee shall request the missing or additional
625 information within a reasonable period of time of such evaluation. If
626 the mortgagee's evaluation of a complete package reveals that
627 additional information is necessary to underwrite the request, the
628 thirty-five-day deadline for a response shall be extended but only for
629 so long as is reasonable given the timing of the mortgagor's submission
630 of such additional information and the nature and context of the
631 required underwriting. Not later than the third business day after each
632 mediation session, the mediator shall file with the court a report
633 indicating, to the extent applicable, (i) the extent to which each of the
634 parties complied with the requirements set forth in this subdivision,
635 including the requirement to engage in conduct that is consistent with
636 the objectives of the mediation program and to possess the ability to
637 mediate, (ii) whether the mortgagor submitted a complete package of
638 financial documentation to the mortgagee, (iii) a general description of
639 the foreclosure alternative being requested by the mortgagor, (iv)
640 whether the mortgagor has previously been evaluated for similar
641 requests, whether prior to mediation or in mediation, and, if so,
642 whether there has been any apparent change in circumstances since a
643 decision was made with respect to that prior evaluation, (v) whether
644 the mortgagee has responded to the mortgagor's request for a
645 foreclosure alternative and, if so, a description of the response and
646 whether the mediator is aware of any material reason not to agree with
647 the response, (vi) whether the mortgagor has responded to an offer
648 made by the mortgagee on a reasonably timely basis, and if so, an

649 explanation of the response, (vii) whether the mortgagee has requested
650 additional information from the mortgagor and, if so, the stated
651 reasons for the request and the date by which such additional
652 information shall be submitted so that information previously
653 submitted by the mortgagor, to the extent possible, may still be used
654 by the mortgagee in conducting its review, (viii) whether the
655 mortgagor has supplied, on a reasonably timely basis, any additional
656 information that was reasonably requested by the mortgagee, and, if
657 not, the stated reason for not doing so, (ix) if information provided by
658 the mortgagor is no longer current for purposes of evaluating a
659 foreclosure alternative, a description of the out-of-date information
660 and an explanation as to how and why such information is no longer
661 current, (x) whether the mortgagee has provided a reasonable
662 explanation of the basis for a decision to deny a request for a loss
663 mitigation option or foreclosure alternative and whether the mediator
664 is aware of any material reason not to agree with that decision, (xi)
665 whether the mortgagee has complied with the time frames set forth in
666 this subdivision for responding to requests for decisions, (xii) if a
667 subsequent mediation session is expected to occur, a general
668 description of the expectations for such subsequent session and for the
669 parties prior to such subsequent session and, if not otherwise
670 addressed in the report, whether the parties satisfied the expectations
671 set forth in previous reports, and (xiii) a determination of whether the
672 parties will benefit from further mediation. The mediator shall deliver
673 a copy of such report to each party to the mediation when the mediator
674 files the report. The parties shall have the opportunity to submit their
675 own supplemental information following the filing of the report,
676 provided such supplemental information shall be submitted not later
677 than five business days following the receipt of the mediator's report.
678 Any request by the mortgagee to the mortgagor for additional or
679 updated financial documentation shall be made in writing. The court
680 may impose sanctions on any party or on counsel to a party if such
681 party or such counsel engages in intentional or a pattern or practice of
682 conduct during the mediation process that is contrary to the objectives
683 of the mediation program. Any sanction that is imposed shall be

684 proportional to the conduct and consistent with the objectives of the
 685 mediation program. Available sanctions shall include, but not be
 686 limited to, terminating mediation, ordering the mortgagor or
 687 mortgagee to mediate in person, forbidding the mortgagee from
 688 charging the mortgagor for the mortgagee's attorney's fees, awarding
 689 attorney's fees, and imposing fines. In the case of egregious
 690 misconduct, the sanctions shall be heightened. The court shall not
 691 award attorney's fees to any mortgagee for time spent in any
 692 mediation session if the court finds that such mortgagee has failed to
 693 comply with this subdivision, unless the court finds reasonable cause
 694 for such failure.

695 Sec. 17. Sections 49-31t and 49-31u of the general statutes are
 696 repealed. (*Effective from passage*)

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	New section
Sec. 4	<i>from passage</i>	New section
Sec. 5	<i>from passage</i>	New section
Sec. 6	<i>from passage</i>	New section
Sec. 7	<i>from passage</i>	49-24b(a)
Sec. 8	<i>from passage</i>	49-24e(a) and (b)
Sec. 9	<i>from passage</i>	49-24
Sec. 10	<i>from passage</i>	49-24a
Sec. 11	<i>from passage</i>	49-24b(b)
Sec. 12	<i>from passage</i>	49-31e
Sec. 13	<i>from passage</i>	49-22
Sec. 14	<i>from passage</i>	49-31l(c)(4)
Sec. 15	<i>from passage</i>	49-31n(b)(2)
Sec. 16	<i>from passage</i>	49-31n(c)(2)
Sec. 17	<i>from passage</i>	Repealer section

Statement of Legislative Commissioners:

In Section 2, "encumbrances" was changed to "liens," "loan modified" was changed to "modified mortgage," and sections "3 to 5" was

changed to sections "4 and 5" for accuracy and for consistency with other provisions of the act; in Section 3, "subject property" was replaced with "residential real property encumbered by the mortgage" and "Any" was changed to "The" for clarity; in Section 4, "an existing foreclosure case" was changed to "a pending foreclosure action" and "a transfer" was added before "agreement" for clarity, "residential property" was changed to "residential real property encumbered by the mortgage", "contemplated transaction" was changed to "modification or transfer" and, "losses" was changed to "loss" for clarity and consistency with other provisions of the section and "as applicable" was deleted for conciseness; in Section 5, Subdivs. (1) and (2) were paragraphed, the second sentence was divided into three sentences, "set forth in sections 29-31k to 49-31o, inclusive" was replaced with "established pursuant to section 49-31m," "and in order" was replaced by "In determining whether," the original Subpara. designators (A) and (B) were deleted, clauses (i) and (ii) were changed to new Subparas. (A) and (B), "and (B) find" was replaced by "The court may grant such petition upon a determination," for clarity; in Section 6, "on the residential real property encumbered by the underwater mortgage" was added after junior lien for clarity; in Section 7, "at any point subsequent to the commencement of a foreclosure action" was shifted to an earlier place in the sentence for clarity; in Section 8(b), "by market sale" was added after "foreclosure" and "such receipt, satisfaction" was replaced with "either receipt of such contract or such satisfaction" to capture the intended meaning. Section 16 was added to make conforming changes to 49-31n(c)(2) for consistency with other provisions of the section and the remaining section was renumbered.

BA *Joint Favorable Subst.*